

FEB 6 2009

JAMES N. HATTEN, Clerk

Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ERIK MAYS,	:	PRISONER HABEAS CORPUS
Petitioner,	:	28 U.S.C. § 2241
	:	
v.	:	
	:	
LOREN GRAYER, Warden,	:	CIVIL ACTION NO.
et al.,	:	1:09-CV-0037-TWT-AJB
Respondents.	:	

ORDER and OPINION

Petitioner, Erik Mays, incarcerated at the Federal Prison Camp in Atlanta, Georgia, has filed this 28 U.S.C. § 2241 habeas corpus petition that challenges the Federal Bureau of Prisons' (BOP's) alleged refusal to consider him for a full twelve-month placement in a Residential Reentry Center (RRC), as required by the Second Chance Act of 2007.¹ (Doc. No. 1.) The matter is before this Court on Petitioner's motion to withdraw his petition (Doc. No. 3), construed as a motion to voluntarily dismiss under Fed. R. Civ. P. 41(a)(2).

This Court may dismiss an action, in which no counterclaim is pending, on Petitioner's request "on terms that the court considers proper." Fed. R. Civ. P.

¹ See Second Chance Act of 2007, Pub. L. No. 110-199, § 251(a), 122 Stat. 657, 692-93 (April 9, 2008) (amending 18 U.S.C. § 3624(c)(1) & (2)).

41(a)(2). See also Rules Governing Section 2254 Proceedings for the United States District Courts, Rules 1(b) & 11. Respondent has no pending counterclaim, and Petitioner's construed motion is due to be granted. The dismissal shall be without prejudice. See Thai v. United States, 391 F.3d 491, 495-96 (2d Cir. 2004) (holding that voluntary withdrawal of a § 2255 motion generally should be deemed a dismissal without prejudice).

For the reasons discussed above,

IT IS ORDERED that Petitioner's construed motion (Doc. No. 3) to voluntarily dismiss this 28 U.S.C. § 2241 petition is **GRANTED**, and this action is **DISMISSED** without prejudice.

IT IS SO ORDERED, this 6 day of February, 2009.


THOMAS W. THRASH, JR.
UNITED STATES DISTRICT JUDGE